

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY WEBSTER MAYER,

Defendant.

No. 4:15-CR-2024-SMJ

**ORDER ADOPTING REPORT
AND RECOMMENDATION,
SETTING SENTENCING, AND
ESTABLISHING SENTENCING
BRIEFING SCHEDULE**

Before the Court is Magistrate Judge Hutton's April 1, 2015 Report and Recommendation, ECF No. 11, recommending that the Court finds Defendant's plea of guilty is knowing, intelligent, and voluntary and is not induced by fear, coercion, or ignorance. No objections have been filed by either party.

After reviewing the Report and Recommendation and relevant authorities, the Court finds the Magistrate Judge's findings are correct. Therefore, the Court adopts the Report and Recommendation in its entirety.

Accordingly, **IT IS HEREBY ORDERED:**

1. The Report and Recommendation, **ECF No. 11**, is **ADOPTED** in its entirety.

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1 **2.** The Court finds that Defendant's guilty plea to Count One is
2 knowing, intelligent, and voluntary and is not induced by fear,
3 coercion, or ignorance. The Court finds this plea is given with the
4 knowledge of the charged crime, the essential elements of the
5 charged crime, the Government's evidence of the charged crime, and
6 the consequences of pleading guilty. The Court further finds that the
7 facts admitted to by Defendant in open court constitute the essential
8 elements of the crime charged.

9 **3.** Defendant's guilty plea to Count One is **ACCEPTED**.

10 **4.** All pending motions are **DENIED AS MOOT**.

11 **5.** The trial date is **STRICKEN**.

12 **6.** In the event an Order is entered permitting withdrawal of the guilty
13 plea, Speedy Trial Act time will be calculated consistent with 18
14 U.S.C. § 3161(i).

15 **7.** The date of the sentencing is **Wednesday, June 17, 2015**, at **10:00**
16 **AM** in **YAKIMA**.

17 **8.** If a sentence of incarceration is imposed, Defendant shall be placed
18 in custody at the time of sentencing. Sentencing will be scheduled
19 for a total of forty-five (45) minutes. If it is believed that the
20 sentencing hearing will last longer, counsel shall contact Chambers

1 within fourteen (14) days of disclosure of the presentence
2 investigation report. Pending sentencing, Defendant's detention
3 status or release status shall remain pursuant to this Court's previous
4 order. The United States Probation Office shall prepare a timely
5 presentence investigation report that will comply with the following
6 schedule:

- 7 1. Not less than **thirty-five (35) days** prior to the sentencing
8 hearing, the probation officer shall disclose the pre-sentence
9 investigation report to the Defendant, counsel for Defendant,
10 and the Government.
- 11 2. Within **fourteen (14) days** of the disclosure of the pre-
12 sentence investigation report, counsel shall communicate in
13 writing to the probation office any objections they may have as
14 to factual errors or omissions; sentencing classifications;
15 sentencing guideline ranges; and policy statements contained
16 in or omitted from the report. Such communication may be
17 oral initially but shall immediately be confirmed in writing to
18 the probation officer and opposing counsel.
- 19 3. Also within **fourteen (14) days** of disclosure of the
20 presentence investigation report, counsel shall file and serve all

1 motions and memoranda pertaining to Defendant's sentence,
2 including motions for downward or upward departures.
3 Counsel shall utilize the following format when preparing
4 initial memoranda which are limited to twenty pages (absent
5 prior Court permission to file an overlength brief): I. Base
6 Offense Level & Enhancements, II. Departures, III. 18 U.S.C.
7 3553(a). Under the "Base Offense Level & Enhancements"
8 section, counsel shall discuss whether the PSIR's Total Offense
9 Level calculations (not including departures) are correct or
10 incorrect, providing legal authority for the party's position.
11 Under the "Departure" section, counsel shall discuss whether a
12 downward and/or upward departure is warranted under the
13 Guidelines and provide legal authority for such position.
14 Under the "18 U.S.C. 3553(a)" section, counsel shall discuss
15 whether the resulting guideline range provides a reasonable
16 sentence sufficient, but not greater than necessary, to comply
17 with the purposes set forth in 18 U.S.C. 3553(a)(2),
18 considering the other factors listed in 3553(a). The parties are
19 limited to one reply of no more than 7 pages. No other
20 pleadings are allowed without advance permission of the

1 Court. **FAILURE TO FILE AND SERVE A MOTION**
2 **FOR DOWNWARD DEPARTURE WITHIN 14 DAYS OF**
3 **RECEIPT OF THE PRESENTENCE INVESTIGATION**
4 **REPORT WILL BE DEEMED A WAIVER OF THE**
5 **RIGHT TO DO SO.** The time frame for filing and serving
6 responses to such motions shall be governed by Local Criminal
7 Rule 45. Any request with regard to self-reporting shall be
8 made to the probation office at the same time any
9 objections/motions are filed.

10 4. After receiving counsel's objections, the probation officer shall
11 conduct any further investigation and make any revisions to
12 the presentence report that may be necessary. The probation
13 officer may require counsel for both parties to meet with the
14 officer to discuss unresolved factual and legal issues, and
15 counsel shall make themselves available for that purpose.

16 5. At least **ten (10) days** prior to the date of the sentencing
17 hearing the probation officer shall submit the presentence
18 report to the sentencing judge. The report shall be
19 accompanied by an addendum setting forth any objections
20 counsel may have made, including those that have not been

1 resolved, together with the officer's comments and
2 recommendations thereon. The probation officer shall certify
3 that the contents of the report other than sentencing
4 recommendations, including any revisions or addenda, have
5 been disclosed to counsel for Defendant and the Government,
6 and that the addendum fairly states any remaining objections.

7 6. Except with regard to any written objection made under
8 subdivision (a), the report of the presentence investigation and
9 computations shall be accepted by the Court as accurate. For
10 good cause shown, however, the court may allow a new
11 objection to be raised at any time before the imposition of
12 sentence. In resolving disputed issues of fact, the court may
13 consider any reliable information presented by the probation
14 officer, Defendant, or the Government.

15 7. Nothing in this rule requires the disclosure of any portions of
16 the presentence report that are not disclosable under Rule 32 of
17 the Federal Rules of Criminal Procedure.

18 8. The presentence report shall be deemed to have been disclosed
19 (1) when a copy of the report is physically delivered; or (2) one
20 day after the availability of the report for inspection is orally


communicated; or (3) three days after a copy of the report, or notice of its availability, is mailed to counsel, whichever date is earlier.

9. If counsel anticipates that sentencing will take more than 45 minutes, counsel must contact the Courtroom Deputy at (509) 943-8173.

10. Following sentencing, Defendant shall be taken into the custody of the United States Marshal Service unless (1) Defendant has been released prior to sentencing, (2) Defendant specifically requests the opportunity to self-report, and (3) Defendant demonstrates that he is a candidate for self-reporting. If Defendant requests the opportunity to self-report, Defendant must demonstrate the financial ability to travel to a facility on the East Coast.

IT IS SO ORDERED. The Clerk's Office is directed to enter this order and to provide copies to counsel, the U.S. Probation Office, the U.S. Marshals Service, and Magistrate Judge Hutton.

DATED this 21st day of April 2015.


SALVADOR MENDEZ, JR.
United States District Judge